CENTRAL SPECTRUM (M) SDN BHD

v.

SRI RINGGIT HOLDINGS SDN BHD

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
ABDUL KADIR SULAIMAN JCA
ABDUL AZIZ MOHAMAD JCA
[CIVIL APPEAL NO: B-02-281-2001]
13 APRIL 2005

LAND LAW: *Sale of land - Contract for sale - Plaintiff purchased a plot of land in land developed by first defendant - No actual physical access to plaintiff's lot - Whether first defendant under contractual or statutory obligation to provide access to plaintiff's lot - National Land Code, s. 136*

CONTRACT: *Sale and purchase of land - Agreement - Plaintiff purchased a plot of land in land developed by first defendant - No actual physical access to plaintiff's lot - Whether first defendant under contractual or statutory obligation to provide access to plaintiff's lot - National Land Code, s. 136*

The appellant/first defendant, a developer of certain land for "housing, commercial, industrial and warehousing purposes" ('the development'), had entered into a sale and purchase agreement ('the agreement') with the respondent/plaintiff for a plot of land in the development. The plaintiff's case, after purchasing the plot of land, was that the first defendant was under a contractual, or alternatively, a statutory obligation to provide access to the subject property. It was not in dispute that there was access to the development from the public highway and that the first defendant had constructed an internal main road within the development. However, there was no road connecting the plaintiff's lot to the internal main road and there was no actual physical access to the plaintiff's lot as a large monsoon drain had been dug in front of it. The plaintiff's complaint was that its property was, therefore, landlocked without access. The learned judge of the High Court found the plaintiff's complaint to be justified. Hence, the present appeal by the first defendant.

The first defendant gave three reasons for maintaining that it was not obliged by the agreement to construct a means of access to the plaintiff's lot, they being: (i) that the "bridge or access" was to be constructed by the plaintiff because there was no requirement in the agreement to construct a "bridge" to the plaintiff's lot; (ii) that the bridge or access was to be constructed by the plaintiff because the first defendant did not know the type of bridge that would

be suitable for the factory to be built by the plaintiff on its plot; and (iii) that cl. 7.4 of the agreement provided, among other things, that "All internal roads … and any other infrastructure work within the plot" should be constructed by the plaintiff.

Held (allowing the appeal)

Per Gopal Sri Ram and Abdul Aziz Mohamad JJCA delivering the judgment of the court:

[1] After reading the agreement as a whole, including cls. 7 and 8 as well as the Third and Fourth Schedules that were relied on by the plaintiff, this court was unable to find any obligation imposed on the first defendant of the nature suggested by the plaintiff. The aforesaid clauses merely required the first defendant to construct the internal roads in the development. They did not in any way impose a further obligation on the first defendant to construct a road over the monsoon drain connecting the plaintiff's lot to the internal main road. A bridge to the plaintiff's lot would not fall within the term "Roads" in the Fourth Schedule to the agreement; therefore, the first defendant was not obliged by the agreement to provide the bridge. (pp 346 b-c & 348 g)

[2] Section 136 of the National Land Code was of no assistance to the plaintiff as it was an administrative provision regulating the terms on which sub-division should be granted. It did not impose a duty on the first defendant to build a small stretch of road connecting the plaintiff's land, across the monsoon drain, to the main internal road. In the present instance, the land marked for development had already been sub-divided into separate sub-divisional portions. Also, the first defendant had provided access from the public highway to the whole of the land. So there was nothing in the point taken by the plaintiff and it had addressed the wrong target, and the upshot was that it was for the plaintiff at its own cost to build the limited access road onto its vacant land. (p 346 e-g)

[3] The first defendant's second reason could not affect the question of interpretation of whether the word "Roads" in the Fourth Schedule could include an access bridge to the plaintiff's plot because if it could and the first defendant was therefore bound to construct the bridge, it should not be difficult for the first defendant to ascertain the type of bridge that would meet the plaintiff's needs. (p 349 a)

[4] In respect of the first defendant's third reason, the first defendant did not explain why it had said that an access way, which obviously would be outside the plaintiff's plot, would be an internal road. The plaintiff had argued that since cl. 7.4 of the agreement obliged it to construct only roads within its plot, the linking access, which would be outside its plot, must be provided by the first defendant. However, since the word "Roads" in the Fourth Schedule did not include the access, the plaintiff would be obliged to build the access that it needs even though cl. 7.4 of the agreement did not oblige it to do so. (p 349 e-h)

[5] For the reasons already given, the learned judge had fallen into error in finding for the plaintiff. Thus, the appeal was accordingly allowed. (p 346 h)

*[**Bahasa Malaysia** Translation Of Headnotes*

Perayu/defendan pertama, seorang pemaju yang memajukan sebidang tanah untuk "tujuan perumahan, komersial, perindustrian dan pergudangan ('pembangunan'), telah memeterai perjanjian jual beli dengan responden/plaintif ('perjanjian') berkaitan sebidang tanah disitu. Kes plaintif, setelah membeli tanah tersebut, adalah bahawa defendan pertama berkewajipan, sama ada secara kontraktual ataupun di sisi statut, untuk menyediakan akses kepada tanahnya itu. Tidak dinafikan bahawa terdapat akses kepada pembangunan dari lebuhraya awam dan bahawa defendan pertama telah juga membina jalan utama dalaman di dalam pembangunan. Bagaimanapun, tidak ada akses yang menghubung lot plaintif ke jalan utama dalaman, dan akses fizikal ke tanah plaintif juga tidak ada kerana dihalang oleh parit monsun yang digali di hadapannya. Bantahan plaintif adalah bahawa tanahnya telah menjadi tertutup kerana ketiadaan akses kepadanya. Yang arif hakim Mahkamah Tinggi mendapati bantahan plaintif adalah wajar, sekaligus menyebabkan rayuan oleh defendan pertama di sini.

Defendan pertama memberi tiga sebab mengapa ia tidak bertanggungan di bawah kontrak untuk membina jalan masuk ke tanah plaintif, iaitu: (i) bahawa 'jambatan atau akses" harus dibina oleh plaintif sendiri kerana tiada peruntukan di dalam perjanjian untuk defendan pertama membina "jambatan" sedemikian; (ii) bahawa jambatan atau akses perlu dibina oleh plaintif kerana defendan pertama tidak tahu apakah jenis jambatan yang sesuai untuk gudang yang akan dibina oleh plaintif di tanahnya; dan (iii) bahawa fasal 7.4 perjanjian memperuntukkan, antara lain, bahawa "Semua jalan-jalan dalaman … dan mana-mana infrastruktur lain di dalam tanah" harus dibina oleh plaintif.

Diputuskan (membenarkan rayuan)
Oleh Gopal Sri Ram dan Abdul Aziz Mohamad HHMR menyampaikan penghakiman mahkamah:

[1] Setelah membaca perjanjian secara keseluruhannya, termasuk fasal 7 dan 8 dan Jadual Ketiga dan Keempat yang menjadi sandaran plaintif, mahkamah ini tidak mendapati bahawa defendan pertama telah dipertanggungjawabkan dengan sesuatu seperti yang dikatakan oleh plaintif. Fasal-fasal tersebut hanya mengkehendaki defendan pertama untuk membina jalan-jalan dalaman di dalam pembangunan. Ia tidak mengenakan obligasi tambahan ke atas defendan pertama untuk membina jalan menyeberangi parit monsun bagi menyambung tanah plaintif ke jalan utama dalaman. Jambatan ke tanah plaintif juga tidak dirangkum oleh maksud perkataan "Jalan-jalan" di dalam Jadual Keempat perjanjian; oleh itu, di bawah perjanjian, tiada obligasi bagi defendan pertama untuk menyediakan jambatan.

[2] Seksyen 136 Kanun Tanah Negara tidak membantu plaintif kerana ia hanyalah peruntukan pentadbiran yang mengawalselia terma-terma bagi tujuan pemecahan tanah. Ia tidak mengenakan sebarang tanggungjawab ke atas defendan pertama untuk membina seregang jalan kecil bagi menghubung tanah plaintif, yang berada di seberang parit monsun, ke jalan utama dalaman. Dalam kes semasa, tanah yang ditandakan untuk pembangunan telah dipecahbahagi kepada lot-lot yang berasingan. Selain itu, defendan pertama telah menyediakan akses dari lebuhraya awam ke keseluruhan tanah. Jadi, tiada asas pada hujah yang dibangkitkan plaintif, yang sebenarnya menumpu kepada sasaran yang salah, berakibat, menjadi tanggungjawab plaintif untuk membina dengan kos sendiri jalan akses terhad tersebut untuk sampai ke tanah kosongnya.

[3] Sebab kedua yang diberikan oleh defendan pertama tidak menjejaskan persoalan interpretasi sama ada perkataan "Jalan-jalan" di dalam Jadual Keempat merangkumi jambatan akses ke tanah plaintif sebab, jika begitu keadaannya dan defendan pertama bertanggungjawab untuk membina jambatan tersebut, tentulah tidak timbul masalah bagi defendan pertama menentukan jenis jambatan yang akan memenuhi keperluan plaintif.

[4] Berhubung sebab ketiga defendan pertama, defendan pertama tidak menjelaskan kenapa ia mengatakan bahawa jalan akses, yang tentunya berada di luar tanah plaintif, adalah suatu jalan dalaman. Plaintif menghujah bahawa, oleh kerana fasal 7.4 perjanjian mewajibkannya membina hanya jalan-jalan di dalam tanahnya, akses penyambung, yang berada di luar tanahnya, hendaklah disediakan oleh defendan pertama. Bagaimanapun, oleh kerana perkataan "Jalan-jalan" di dalam Jadual

Keempat tidak termasuk akses sedemikian, plaintif bertanggungjawab untuk membina akses yang diperlukannya itu walaupun fasal 7.4 perjanjian tidak mewajibkannya berbuat demikian.

[5] Berdasarkan alasan-alasan yang dikemukakan, yang arif hakim telah tersilap dalam membuat keputusan yang berpihak kepada plaintif. Rayuan, dengan itu, dibenarkan.

Legislation referred to:
National Land Code, s. 136

For the appellant - S Ramachandran (Murad Ali & Loo Chay Meng with him); M/s Abu Hassan & Assoc
For the respondent - Lim Kien Huat; M/s Lee & Lim

[Appeal from High Court, Shah Alam; Originating Summons No: MT2-24-615-1998]

Reported by Suresh Nathan

JUDGMENT

Gopal Sri Ram JCA:
This is a simple case. It concerns the interpretation of an agreement entered into between the parties to this litigation. It also concerns the meaning of s. 136 of the National Land Code 1965 ("the Code") on which the plaintiff (the respondent before us) relied to establish its case before the High Court. But first the facts.

The first defendant (the appellant before us) is a developer of 5860 acres of land in Pulau Indah, Selangor. The plaintiff purchased a plot of land measuring 87,820 square feet in that development. It was vacant land meant for industrial use. But the first defendant did not covenant to construct any building on it. The sale and purchase agreement between the parties is dated 13 June 1995. The plaintiff's case is that the first defendant is under a contractual or alternatively under a statutory obligation to provide access to the subject property. It does not appear to be in dispute that there is access to the development from the public highway. Equally, it is not in dispute that the first defendant has constructed an internal main road within the development. But there is no road connecting the plaintiff's lot to the internal main road. The undisputed documentary evidence shows that there a large monsoon drain has been dug in front of the plaintiff's lot so that there is no actual physical access to it. The plaintiff's complaint is therefore that its property is landlocked without access. The learned judge of the High Court found the plaintiff's complaint to be justified. The first defendant has now appealed to us.

If the plaintiff is to succeed at all in this case, it must be able to point either to a term in the sale and purchase agreement imposing a duty on the first defendant to build a road connecting its land to the internal main road or to a statutory provision imposing such a duty. Now, we have scrutinised the sale and purchase agreement, in particular cls. 7 and 8 as well as the Third and Fourth Schedules which we do not intend to reproduce here as they are of no assistance whatsoever to the plaintiff. We have read the agreement as a whole, including the clauses relied on by the plaintiff, and we are unable to find any obligation imposed on the first defendant of the nature suggested by the plaintiff. The aforesaid clauses merely require the first defendant to construct the internal roads in the development. They do not in any way impose a further obligation on the first defendant to construct a road over the monsoon drain connecting the plaintiff's lot to the internal main road.

That brings us to s. 136 of the Code. The section merely says that the State Director is not to approve any application for sub-division of alienated land unless certain conditions are satisfied. Among these is a condition that the proprietor of the land shall agree in his application for sub-division that he will provide the necessary means of access by making up a road to the designated standard. By its tenor the section directs the State Director to ensure there shall be a satisfactory means of access from any sub-divisional portion to a road or other public transport system, such as a river or railway station. It will be seen at once that the section is of no assistance to the plaintiff despite its learned counsel's sustained reliance on it. It is an administrative provision regulating the terms on which sub-division should be granted. It does not impose a duty on the first defendant to build a small stretch of road connecting the plaintiff's land, across the monsoon drain, to the main internal road.

In the present instance, the land marked for development has already been sub-divided into separate sub-divisional portions. Also, the first defendant has provided access from the public highway to the whole of the land. So there is nothing in the point taken by the plaintiff's counsel and we really think that he has addressed the wrong target. The upshot is that it is for the plaintiff at its own cost to build the limited access road onto its vacant land.

For the reasons already given we came to the conclusion that the learned judge fell into error in finding for the plaintiff. The appeal was accordingly allowed and those orders made that are usually made consequent upon the success of an appeal.

My learned brother Abdul Kadir bin Sulaiman, JCA has seen this judgment in draft and has expressed his agreement with it.

Abdul Aziz Mohamad JCA:

The problem of access to the respondents' plot is as set out in para. 2 of the grounds of judgment of my learned brother Gopal Sri Ram JCA. The respondents' case was that it was the duty of the appellants to construct a way spanning the drain and linking the internal main road to the respondents' plot so that there would be access to the plot. That road, whose width is 39 feet, runs within a road reserve whose width is 100 feet. The drain, whose width is 7 metres, runs within a drain reserve whose width is 10 metres. So the access way that the respondents need would span part of the road reserve and the entire drain reserve and would be outside the respondents' plot.

The respondents' plot is an industrial lot and is part of "the Development", which according to recital D in the sale and purchase agreement was the development of the Master Land by the appellants "for housing, commercial, industrial and warehousing purposes". In selling the plot to the respondents the appellants undertook in cl. 7.1 of the sale and purchase agreement to provide the "Basic Infrastructure" specified in the Fourth Schedule to the agreement. In the Fourth Schedule the Basic Infrastructure is stated as one "to be provided for the Development". Among the items specified in the Fourth Schedule is "Roads and roadside drains". The learned judge decided that the word "Roads" included an access way (jalan akses) to the respondents' plot.

In the appeal the appellants gave three reasons for maintaining that they were not obliged by the sale and purchase agreement to construct a means of access to the respondents' plot. Firstly, the appellants said in para. 9 of their skeletal submission that the "bridge or access" was to be constructed by the respondents because there was no requirement in the sale and purchase agreement for them to construct a "bridge" to the respondents' plot. It was an argument that failed to address the specific question of the meaning of "Roads" in the Fourth Schedule, that is whether "Roads" included a bridge that would provide access to the respondents' plot. The appellants did not argue why the word "Roads", as a matter of interpretation of the word, could not include such an access. I think that the appellants focussed on a bridge as the required access because in the High Court, according to the notes of proceedings, the respondents had maintained that the appellants should have constructed a bridge as a form of access.

On the other hand, neither did the respondents argue strenuously why "Roads" would include a bridge to their plot. By way of submission from the angle of interpretation they merely said in their skeletal submission (p. 17): "Access being a path of way linking one piece of land with another would clearly fall under the definition of 'road'".

In deciding the question I confined myself to the consideration that the respondents' case was that the access to their plot should be in the form of a bridge. I considered that "Roads" in the Fourth Schedule was intended to refer to roads of the ordinary type such as are seen in development projects. If such a road had to cross a stream or large drain, the part that would provide the crossing could be in the form of a bridge, and I had no doubt that that part would be a part of the road that the appellants were obliged by the sale and purchase agreement to provide. The appellants could hardly be said to have provided a road for the Development if they did not also provide for a crossing over the stream or drain because then the road would not serve its purpose as people and vehicles would not be able to use it. But an isolated bridge to the respondents' plot would be just a bridge and would not fall within the concept of the ordinary type of road and neither would it be a part of the main road constructed to make the road passable. It would be incongruous with the ordinary concept of a road. It would be just an isolated structure of, say, metal sheets or concrete slabs of about 10 metres long. The situation may be likened to that of any ordinary lot in a housing development. There will generally be a small drain running along the front of the property parallel to the road serving the property. To enable a vehicle to get across the drain from the road into the property, something is placed over or across the drain, such as concrete slabs or metal grating. Such a structure can hardly be called a road. Of course, the drain in front of the respondents' plot is not a small drain, but the principle remains the same. The construction bridging the drain would not be a road of the ordinary type that is contemplated by the Fourth Schedule to the sale and purchase agreement. If the appellants and the respondents had put their minds to it and had intended that the appellants should provide an access bridge to the respondents' plot, they would have used some express words and not have simply relied on the word "Roads" to express their intention.

That was the thinking that led me to conclude that a bridge to the respondents' plot would not fall within the term "Roads" and that therefore the appellants were not obliged by the sale and purchase agreement to provide the bridge and their appeal should be allowed.

Although it was on that reason that the appellants, in my view, succeeded in the appeal, I shall nevertheless deal with their other two reasons because I am not in agreement with them on those reasons and I feel that, for the possible benefit of the respondents, I ought to state my reasons for disagreeing.

As to the second reason, the appellants, also in para. 9 of their skeletal submission, argued that the bridge or access was to be constructed by the respondents because the appellants did not know the type of bridge that would be suitable for the factory to be built by the respondents on their plot. That

argument could not affect the question of interpretation whether the word "Roads" could include an access bridge to the respondents' plot, because if it could, and the appellants were therefore bound to construct the bridge, it should not be difficult for them to ascertain the type of bridge that would meet the respondents' needs.

The appellants' third reason was based on cl. 7.4 of the sale and purchase agreement. That clause, among other things, provided that "All internal roads … and any other infrastructure work within the plot" shall be constructed by the respondents. In para. (iii) at p. 3 of their supplementary outline of submission, the appellants said this:

> The Learned Judge erred in not noticing the distinction between Basic Infrastructure for the Development as stipulated in the Fourth Schedule which refers to the basic infrastructure for the Master Land as per the definition given in the SPA in the Recital D … for the phrase "Development" against the stipulation in Clause 7.4 "All internal roads, …" which refers to private roads to and fro the Plot and within the Plot;

The significant thing to notice from that paragraph is that, to the appellants, the "internal roads" that cl. 7.4 required the respondents to construct referred also to "private roads to and fro the Plot". The appellants were impliedly saying that the means of access to the respondents' plot, being a private road and a road to and from the plot, would be an internal road which cl. 7.4 required the respondents to construct. The appellants did not explain why they said that an access way, which obviously, as I said, would be outside the respondents' plot, would be an internal road.

I may mention that the respondents also relied on cl. 7.4 to argue that it was the obligation of the appellants to build the means of access. They argued that since cl. 7.4 obliged them to construct only roads within their plot, the linking access, which would be outside their plot, must be provided by the appellants. That was an argument that ignored the need to construe the word "Roads" in the Fourth Schedule. If the word did not include the access, as in fact I found, the appellants were not bound to provide the access and, unfortunately for the respondents, they would have themselves, with the necessary approvals, to build the access that they need even though cl. 7.4 does not oblige them to do so.

As to the respondents' reliance on s. 136 of the National Land Code, particularly s. 136(1)(h), the reasons in para. 4 of my learned brother's judgment essentially coincide with my reasons for rejecting it.